

ORIGINAL  
EXCEPTION



OPEN MEETING AGENDA ITEM

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

**DOCKETED**

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IN THE MATTER OF THE APPLICATION  
OF ALLTEL COMMUNICATIONS, INC.,  
FOR DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER PUR-  
SUANT TO SECTION 214(e)(2) OF THE  
COMMUNICATIONS ACT OF 1934.

**DOCKET NO. T-03887A-03-0316**

**EXCEPTIONS OF THE ARIZONA  
LOCAL EXCHANGE CARRIERS  
ASSOCIATION**

On August 16, 2004, the Arizona Corporation Commission's administrative law judge ("ALJ") issued a recommended opinion and order in the above-captioned docket. Intervenor Arizona Local Exchange Carriers Association ("ALECA"), an industry association of incumbent local exchange carriers ("ILECs") serving rural Arizona, submits these exceptions on behalf of the following members: Arizona Telephone Company, CenturyTel, Copper Valley Telephone, Frontier Communications, Midvale Telephone Exchange, Navajo Communications, South Central Communications, Southwestern Telephone Company, Table Top Telephone Company, and Valley Telephone Cooperative. ALECA also includes the Fort Mojave Telephone Company, Gila River Telecommunications, San Carlos Apache Telecom Utility and the Tohono O'odham Utility Authority, which are tribally-owned carriers. Although these carriers are not subject to the jurisdiction of the Commission, they support these exceptions.

**I. INTRODUCTION.**

ALECA opposes the grant of eligible telecommunications carrier ("ETC") status to ALLTEL Communications ("ALLTEL") at this time on the grounds that (i) ALLTEL failed to

1 show the capability and commitment to provide the nine ETC-supported services *throughout* the  
2 designated rural service area; and (ii) ALLTEL failed to show that its designation as an ETC is in  
3 the public interest. Thus, the Commission should not enter the prerequisite finding under Section  
4 214(e)(2) of the 1996 Telecommunications Act (the "Act") that the designation of ALLTEL as  
5 an ETC is in the public interest. While the recommended order establishes essential conditions  
6 and requirements intended to ensure that ALLTEL uses federal high cost support *from rural*  
7 *Arizona* to build out its network *in rural Arizona*--which ALECA fully supports--ALECA urges  
8 that ALLTEL be required to provide tangible evidence of its plan to expand its existing coverage  
9 in rural Arizona before it is allowed to receive federal high cost support.

10 **II. ALLTEL FAILED TO SHOW THAT IT WILL OFFER SERVICE**  
11 **THROUGHOUT ITS ETC-DESIGNATED SERVICE AREA.**

12 Section 214(e)(1) of the Act requires that an applicant for ETC status offer and advertise  
13 the nine ETC-supported services "throughout the service area for which the designation is  
14 received." While the Federal Communications Commission ("FCC") has not required that an  
15 applicant provide ubiquitous service prior to its designation as an ETC, the FCC has required that  
16 the applicant make a reasonable demonstration of its capability and commitment to provide  
17 universal service throughout its ETC-designated area, stating as follows:

18 We caution that a demonstration of the capability and commitment to provide  
19 service must encompass something more than a vague assertion of intent on the  
20 part of a carrier to provide service. The carrier must reasonably demonstrate to  
21 the state commission its ability and willingness to provide service upon  
22 designation. *In the Matter of Western Wireless Corporation's Petition for*  
23 *Preemption of an Order of the South Dakota Commission, Declaratory Ruling,*  
24 *CC Docket No. 96-45, FCC 00-248, 15 F.C.C.R. 15168 (rel. Aug. 10, 2000).*

25 In Arizona, there are significant portions of ALLTEL's requested designated service area  
26 where the company does not provide coverage. ALLTEL states that it would use federal high  
cost support to build out its network in rural Arizona, but the company provides nothing tangible  
to back up this statement. For example:

- ALLTEL did not identify a single construction project the company would

undertake in under-served rural areas if designated an ETC.

- ALLTEL did not provide a single construction plan for new infrastructure to serve under-served rural areas.
- ALLTEL did not provide a single schedule or timetable for constructing infrastructure to serve under-served rural areas.
- ALLTEL has no plans to use available equipment such as three-watt handsets or yagi antennae to provide service in remote areas of its designated service area.
- ALLTEL did not identify any process or policy with any level of detail regarding how the company will address service requests in areas where the company does not have coverage.

The statements of ALLTEL offered in this docket are nothing more than the type of "vague assertions" rejected by the FCC in *Western Wireless*, and they certainly fall short of the "reasonable demonstration" required by the FCC. The following exchange between ALECA's attorney and the ALLTEL witness in this case may best sum up ALLTEL's philosophy:

Q. So essentially Alltel wants to be designated so that it can access federal funds. And once it accesses federal funds, then it will determine where it's going to spend those funds and how it's going to spend them?

A. Yes.

*Hearing Transcript*, Vol. 1, p. 47, lines 17-21.

In the event the Commission approves ALLTEL's application for ETC designation, then each of the conditions proposed by the ALJ in Finding of Fact No. 72 is critical, and should be adopted. Since ALLTEL provided no specific detail regarding how it would use federal high cost support, the Commission must require regular reporting and strict accountability regarding the use of that support. As stated in the recommended order, "benefits will accrue to consumers only if Alltel increases its actual coverage area." *Recommended Opinion and Order* at p. 19, lines 3-4.

In addition, ALECA believes that it is important, as set forth by the ALJ, that federal universal service support be used by ALLTEL "to build out network infrastructure, upgrade

1 existing facilities and expand into rural areas in which Alltel is licensed." *Id.* at p. 21, lines 21-  
2 23. One of the major concerns of the ALECA members is that if designated, ALLTEL would  
3 use federal universal service support received for customers in rural Arizona to construct or  
4 maintain infrastructure in urban Arizona. Because ALLTEL serves both urban and rural areas—  
5 unlike the ALECA member companies—the possibility exists that ALLTEL could circumvent  
6 the intent of Section 254(e) of the Act, which states that "[a] carrier that receives such support  
7 shall use that support only for the provision, maintenance, and upgrading of facilities and  
8 services for which the support is intended."

9 To illustrate, ALLTEL might apply the estimated \$9,000,000 that it will receive in  
10 federal support to the "maintenance" of its existing network in rural areas—maintenance which  
11 ALLTEL is funding today without federal support. ALLTEL could then redeploy dollars that it  
12 is spending today to maintain its rural network to build telecommunications infrastructure in its  
13 urban markets. This would not be consistent with Section 254 of the Act. The  
14 telecommunications infrastructure constructed by ALLTEL in rural Arizona was constructed  
15 without the incentive of federal high-cost support. Using federal support simply to maintain  
16 existing infrastructure in rural Arizona is not enough. The Commission must ensure that federal  
17 support received by ALLTEL for rural Arizona customers is used to construct or upgrade  
18 infrastructure in rural Arizona.

19 There is no question that the Commission has broad authority to impose conditions upon  
20 ALLTEL's use of federal universal service support, including conditions to enforce ALLTEL's  
21 commitment to use federal universal service support in compliance with section 254(e) of the  
22 Act. Section 253(b) of the Act states that:

23 Nothing in this section shall affect the ability of a State to impose, on a  
24 competitively neutral basis and consistent with section 254, requirements  
25 necessary to preserve and advance universal service, protect the public safety and  
26 welfare, ensure the continued quality of telecommunications services, and  
safeguard the rights of consumers.

1 Similarly, section 254(f) of the Act states that "[a] State may adopt regulations not  
2 inconsistent with the [FCC]'s rules to preserve and advance universal service." Thus, the  
3 Commission should impose necessary conditions to ensure that ALLTEL uses any federal high  
4 cost support for the benefit of rural Arizona.

5 **III. ALLTEL HAS FAILED TO MEET THE PUBLIC INTEREST STANDARD.**

6 Section 214(e)(2) of the Act states that "[b]efore designating an additional eligible  
7 telecommunications carrier for an area served by a rural telephone company, the State  
8 commission shall find that the designation is in the public interest." With full awareness of the  
9 crucial role played by rural ILECs as carriers of last resort in high-cost areas (of which Arizona  
10 has many), Congress included this heightened public interest test for applicants seeking ETC  
11 status in areas served by rural ILECs.

12 While state commissions have broad latitude in evaluating applications for ETC  
13 designations in rural areas, many have focused too narrowly on the value of increased  
14 competition without giving proper weight to the equally important principle of universal service.  
15 In the petition of Virginia Cellular, LLC, ("Virginia Cellular") for designation as an ETC, the  
16 Federal Communications Commission ("FCC") declared that "the value of increased  
17 competition, by itself, is not sufficient to satisfy the public interest test in rural areas." *In the*  
18 *Matter of Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications*  
19 *Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-  
20 45, FCC 03-338 (released January 22, 2004), p. 3, ¶ 4. Thus, statements regarding the  
21 generalized benefits of competition when evaluating ETC applications are no longer sufficient  
22 after *Virginia Cellular*.

23 The crux of ALLTEL's public interest showing is that its designation as an ETC will  
24 increase competition and consumer choice. ALLTEL asserts that public benefit begins with  
25 additional customer choice. *Post Hearing Brief of ALLTEL* at 11, line 2. However, Arizona  
26 customers within ALLTEL's licensed service area already have ALLTEL as a choice, along with

1 a number of other wireless carriers, an incumbent local exchange carrier, and possibly a cable  
2 provider and an Internet service provider. This wireless competition developed—and continues  
3 to develop—without federal high cost support. While ALLTEL states that it would expand its  
4 infrastructure in rural areas if designated as an ETC, it has not identified a single construction  
5 project nor provided a single construction plan or timetable.

6 This Commission has previously considered ETC applications from Smith-Bagley, Inc., a  
7 wireless carrier serving on Native American lands. In designating Smith-Bagley as an additional  
8 ETC, the Commission focused almost exclusively on the scarcity of local telephone service on  
9 the Native American lands served by Smith-Bagley, and the commitment made by Smith-Bagley  
10 to bring local exchange service to those lands. *See Decision No. 63269*. Among the relevant  
11 factors cited by the Commission were:

- 12 • Smith-Bagley's licensed service area includes approximately 100,000 potential  
13 Native American subscribers, most of whom live in remote areas where it is *cost*  
*prohibitive to provide wireline telecommunications services*. *Id.* at ¶ 49.
- 14 • In many parts of its licensed service area, Smith-Bagley is the *only*  
15 *telecommunications provider offering any service* and it is doubtful that any  
16 wireline carrier will ever extend lines to those areas. *Id.*
- 17 • Smith-Bagley was willing to expend the resources necessary to offer Basic Local  
18 Exchange Telephone Service to *every potential subscriber* in its licensed service  
19 area. *Id.* (Emphasis added).
- 20 • Smith Bagley was developing innovative programs targeted at the large number  
21 of Native Americans without telephone service. *Id.* at ¶ 50.
- 22 • Smith-Bagley diligently constructed its network to reach unserved areas which  
23 may never be reached by wireline service. *Id.* at ¶ 51.

24 ALLTEL's business plan is very different than the plan presented by Smith Bagley.  
25 ALLTEL has constructed its network without federal high cost support, largely for the benefit of  
26 its urban customers and those customers roaming on the major highways in Arizona. With over  
330,000 customer in Arizona alone, ALLTEL dwarfs other rural ILECs in Arizona. If approved

1 as an additional ETC, ALLTEL will be eligible to begin receiving federal high cost support  
2 without constructing any additional infrastructure. By comparison, rural ILECs are required to  
3 construct infrastructure well before they are entitled to reimbursement from the federal high cost  
4 fund. ALLTEL has failed to demonstrate how its designation as an additional ETC will serve the  
5 public interest. Accordingly, ALECA believes that its application should be denied.

6 **IV. ADDITIONAL CONDITION.**

7 In *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999)  
8 ("*TOPUC v. FCC*"), the U.S. Court of Appeals for the Fifth Circuit invalidated a portion of the  
9 FCC's Universal Service Order which prohibited states from imposing additional eligibility  
10 requirements on carriers otherwise eligible to receive federal support, ruling as follows:

11 The plain language of [section 214(e)] speaks to the question of *how many*  
12 carriers a state commission may designate, but nothing in the subsection prohibits  
13 the states from imposing their own eligibility requirements. This reading makes  
14 sense in light of the states' historical role in ensuring service quality standards for  
15 local service. Therefore, we reverse that portion of the [Universal Service] Order  
16 prohibiting the states from imposing any additional requirement when designating  
17 carriers as eligible for federal universal service. *Id.* at 418 (emphasis in original).

18 In granting the request for ETC status by Alaska DigiTel ("ADT"), a wireless carrier with  
19 limited facilities within the requested designated area, the Regulatory Commission of Alaska was  
20 favorably impressed with ADT's detailed seven-step plan for constructing new facilities, which  
21 was summarized as follows:

22 (a) if ADT can serve within its existing network, ADT will immediately serve the  
23 customer;

24 (b) if the customer is not in an area where ADT currently provides service, ADT  
25 will:

26 Step 1: determine whether the customer's equipment can be modified or replaced  
to provide acceptable service;

Step 2: determine whether a roof-mounted antenna or other network equipment  
can be deployed at the premises to provide service;

1           Step 3: determine whether adjustments at the nearest cell site can be made to  
2           provide service;

3           Step 4: determine whether a cell-extender or repeater can be employed to provide  
4           service;

5           Step 5: determine whether there are any other adjustments to network or customer  
6           facilities that can be made to provide service;

7           Step 6: explore the possibility of offering the resold services of carriers with  
8           facilities available to that location;

9           Step 7: determine whether an additional cell site can be constructed to provide  
10          services, and evaluate the costs and benefits of using scarce high-cost support to  
11          serve the number of customers requesting service.

12          We find ADT's plan is a reasonable means for ADT to provide service throughout  
13          the MTA service area upon reasonable customer request. We will address any  
14          ADT requests to deny service on a case-by-case basis. *In the Matter of the*  
15          *Request by Alaska DigiTel, LLC for Designation as a Carrier Eligible to Receive*  
16          *Federal Universal Service Support Under the Telecommunications Act of 1996,*  
17          *Order Granting Eligible Telecommunications Carrier Status and Requiring*  
18          *Filings, Docket No. U-02-39, Order No. 10, pp. 8-9 (Aug. 28, 2003) (the "Alaska*  
19          *DigiTel Order").*

20          If designated as an additional ETC in rural Arizona, ALECA believes that ALLTEL  
21          should be required to file a plan with the Commission, similar to the seven-step plan adopted in  
22          the *Alaska DigiTel Order*, for serving rural customers who request service from ALLTEL but  
23          who are not within the ALLTEL's coverage area. Such a plan should include reasonable time  
24          periods for responding to service requests, and ALLTEL should be required to report requests for  
25          service on an annual basis to the Commission.

26          **V. CONCLUSION.**

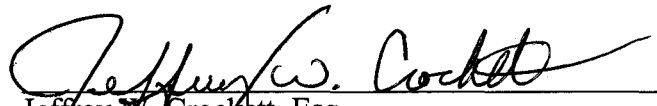
          ALECA submits that ALLTEL has failed to demonstrate that it has met all conditions to  
be designated an ETC for rural areas of Arizona under Section 214(e) of the Act. Further,  
ALECA submits that ALLTEL has not satisfied its burden of demonstrating that its designation  
as an ETC is in the public interest. However, if the Commission decides to grant ETC status to



1 ALLTEL, then the recommendations contained in Finding of Fact No. 72 in the recommended  
2 order are absolutely essential, and should be adopted. In addition, ALECA urges the  
3 Commission require ALLTEL to submit a plan for addressing service requests in rural Arizona  
4 similar to the plan adopted in the *Alaska DigiTel Order*.

5 RESPECTFULLY submitted this 25th day of August, 2004.

6 SNELL & WILMER

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